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# **APPELLATE ADDENDUM:**

## **Guidelines for Indigent Defense Caseloads**

**A Report to the  
Texas Indigent Defense Commission**

Pursuant to House Bill 1318  
83<sup>rd</sup> Texas Legislature





# Guidelines for Appellate Indigent Defense Caseloads

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The Honorable Sharon Keller, Chair of the Texas Indigent Defense Commission (TIDC), as well as Commissioners the Honorable Linda Rodriguez and Don Hase served on the project's Advisory Panel. Commission staff also provided extensive guidance and support over the course of the study. Executive Director, James Bethke and his team including Edwin Colfax, Wesley Shackelford, and Joel Lieurance have been an invaluable resource from conceptualization through completion of the project.

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In Appendix B we acknowledge the 12 attorneys who made significant contributions to the study through their service on the Delphi Panel. Their estimable appellate defense expertise, and their conscientious adherence to the prescribed research protocol, were instrumental for developing the final caseload recommendations set forth in this report.

The project was fortunate to benefit from the tireless and superlative guidance provided by two national caseload scholars, Norman Lefstein, Dean Emeritus and Professor of Law at Indiana University Robert H. McKinney School of Law, and public interest attorney Steven F. Hanlon who now dedicates his practice to assisting and representing public defenders with excessive caseloads. Professor Lefstein's 2011 book, *Securing Reasonable Caseloads*, is a modern classic among academics, policymakers, and advocates seeking to improve indigent defense. Mr. Hanlon instructed members of the appellate Delphi Panel on the professional standards that define reasonably effective counsel. His experience, creativity, and leadership in pioneering new, more rigorous methods to determine caseload guidelines in Missouri inspired many aspects of the research approach used here. The participation of these valued contributors elevated the quality of the study.

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## **Executive Summary**



## Executive Summary

House Bill (HB) 1318, passed by the 83rd Texas Legislature, instructed the Texas Indigent Defense Commission (TIDC) to “conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that... allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation.”<sup>1</sup> In response to this directive, TIDC determined to conduct a weighted caseload study. This methodology accounts for variation in the amount of attorney time required to defend different types of cases. The current study sought to answer two important questions:

1. How much time “is” currently being spent on the defense of court-appointed appellate cases?
2. How much time “should” be spent to achieve reasonably effective representation?

### Timekeeping Records

Timekeeping data was provided by the Dallas and Harris County Public Defender Offices. Data was collected on all cases with 1) an appellate court mandate date from January 2012 through February 2016 and 2) a known page length of the reporter’s record. Using these criteria, timekeeping estimates for current practice were available for 857 appellate cases (607 from Dallas County and 250 from Harris County).

### Delphi Panel

To arrive at final caseload guidelines for Texas, a panel of 12 highly experienced appellate defense practitioners was selected to take part in a Delphi process. The Delphi method offers a rational and structured means to integrate opinions of highly informed professionals to solve problems. Members averaging almost 23 years of experience were selected to represent a broad cross-section of the state. Over a two-month period, Delphi Panel members completed a three-round sequence of activities designed to integrate independent judgment and collaborative decision-making to arrive at recommended case weights.

The length of the record was determined to be the best indicator of the amount of time required to provide representation on appeal. The reporter’s record is a written transcript made by the court reporter that documents the entire court proceedings. Since appellate

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<sup>1</sup> Tex. H.B. 1318, 83rd Leg., R.S. (2013).

attorneys are appointed after a case is initially disposed in a trial court, the page length of the reporter's record will dictate how much time an attorney must spend reading the document and analyzing the issues for appeal. Using Delphi Panel recommendations and data from the Dallas County Public Defender Office, caseload recommendations were developed for four page length groups: (1) Less than 100 Pages, (2) 100-500 Pages, (3) 500-1500 Pages, and (4) More than 1500 Pages.

### **Final Recommended Caseload Guidelines**

Delphi members' final caseload guidelines indicate that more time is required across all reporter record lengths. The largest increase was recommended for cases with a reporter's record of less than 100 pages. Delphi Panel members determined that these cases require 40 percent more attorney time than is currently being spent. The least amount of additional time was recommended for the longest record lengths. Panel members advised a 23 percent increase for cases involving a reporter's record of 500 to 1500 pages and virtually no change in time spent on those exceeding 1500 pages.

Overall, the results indicate for the delivery of reasonably competent and effective representation, attorneys should carry an annual full-time equivalent caseload of no more than the following:

- Less than 100 Pages: 40 cases
- 100-500 Pages: 30 cases
- 500-1500 Pages: 20 cases
- More than 1500 Pages: 14 cases

After weighting caseload estimates by the actual proportions of cases of each page length observed in the timekeeping data, the study produces an overall estimate of 31.2 appellate cases per year.

### **Conclusion**

According to national standards, defense attorneys "should not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations."<sup>2</sup> With the development of caseload guidelines for the state of Texas, a valuable new tool will be available to help define the point at which caseloads become excessive. This tool can be used in important ways to protect the Constitutional right

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<sup>2</sup> ABA, PROVIDING DEFENSE SERVICES, Standard 5-5.3, *available at* [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_defsvcs\\_blk.html#5.3](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_blk.html#5.3)

to counsel and the equitable administration of justice.

With evidence-based caseload parameters, appointing authorities and attorneys taking appointments can be held accountable for managing workloads, information is available to set fair compensation rates, and jurisdictions adhering to reasonable caseload limits are less exposed to potential litigation. Caseload guidelines alone may not guarantee the provision of reasonably effective counsel, but they are certainly a necessary component, essential to securing the Sixth Amendment right to counsel for the indigent accused.



**Guidelines for Appellate  
Indigent Defense Caseloads**





## I. Introduction

After completion of the state's first trial-level weighted caseload study in January 2015,<sup>1</sup> the Texas Indigent Defense Commission (TIDC) approved a follow-up study focusing on appeals. The right to counsel guaranteed by the Sixth Amendment of the U.S. Constitution<sup>2</sup> has been extended to appellate cases based on the Fourteenth Amendment's due process and equal protection clauses.<sup>3</sup> The same professional and ethical parameters that guide the provision of defense in trial-level cases also apply to post-conviction proceedings and appeals as well. Foundational court decisions have established that court-appointed attorneys have an obligation to deliver a meaningful defense with effective assistance of counsel. Practice standards articulated by the American Bar Association and the State Bar of Texas likewise affirm appointed lawyers' duty to competently represent their clients' interests.<sup>4</sup>

Attorneys who are burdened by too many cases cannot meet their obligation to provide "competent" and "quality" representation. *Justice Denied*, a report about indigent defense in the United States, describes situations in which appellate caseloads have resulted in a prohibition on visiting clients or even proper written communication with clients.<sup>5</sup> *Securing*

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<sup>1</sup> TEXAS INDIGENT DEFENSE COMMISSION, GUIDELINES FOR INDIGENT DEFENSE CASELOADS (2015), *available at* [http://www.tidc.texas.gov/media/31818/150122\\_weightedcl\\_final.pdf](http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf)

<sup>2</sup> In *Powell v. Alabama*, 287 U.S. 45 (1932), the United States Supreme Court held that the Sixth Amendment requires that indigent defendants in state court capital cases must be provided the right to counsel. Supreme Court decisions after *Gideon v. Wainwright*, 372 U.S. 335 afforded representation to indigent defendants in other types of cases including misdemeanor cases resulting in imprisonment and juvenile delinquency proceedings. See *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Wilbur v. City of Mt. Vernon*, 989 F.Supp.2d 1122 (2013); In Texas, the Court of Criminal Appeals has long recognized the right to counsel in misdemeanor cases where imprisonment is possible absent a valid waiver of the right to counsel. See, e.g., *Lewis v. State*, 501 S.W.2d 88 (Tex. Crim. App. 1973). In *re Gault*, 387 U.S. 1 (1967).

<sup>3</sup> The Supreme Court has held that criminal defendants have a Sixth Amendment right to effective assistance of counsel at every "critical stage" of prosecution and through the conclusion of direct appeal. The source for the extension of this right to the phase after direct appeal is the Due Process Clause of the Fourteenth Amendment, not the Sixth Amendment. See *Evitts v. Lucey*, 469 US 387, 396 (1985); *Douglas v. California*, 372 U.S. 353 (1963); *Halbert v. Michigan*, 545 U.S. 605 (2005). See also Article 1.051 Texas Code of Criminal Procedure.

<sup>4</sup> Professional standards have been articulated in documents such as STATE BAR OF TEX., PERFORMANCE GUIDELINES FOR NON-CAPITAL CRIMINAL DEFENSE REPRESENTATION (2011) [hereinafter PERFORMANCE GUIDELINES], *available at* [https://www.texasbar.com/AM/Template.cfm?Section=Texas\\_Bar\\_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703](https://www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=14703); ABA, EIGHT GUIDELINES OF PUBLIC DEFENSE RELATED TO EXCESSIVE WORKLOADS (2009), *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_eight\\_guidelines\\_of\\_public\\_defense.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.authcheckdam.pdf); ABA, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2009), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf)

<sup>5</sup> THE CONSTITUTION PROJECT, JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 97 (2009). See also, THE SPANGENBERG GROUP, SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE: APPELLATE DIVISION REVIEW 24 (2008).

*Reasonable Caseloads*, an investigation of the caseload crisis in indigent defense, points to additional instances in which appellate attorneys disciplined for neglect of duties such as the filing of briefs or communication with clients named an overload of appointed cases as the reason cases “fell between the cracks.”<sup>6</sup> High caseloads contribute to a criminal justice system that can result in serious incidents of error. Overburdened defense attorneys have made mistakes resulting in wrongful convictions or excessive sentences for their clients, distorting and threatening individuals’ right to counsel.<sup>7</sup>

In an effort to address these concerns, House Bill (HB) 1318 passed by the 83<sup>rd</sup> Texas Legislature instructed TIDC to “conduct and publish a study for the purpose of determining guidelines for establishing a maximum allowable caseload for a criminal defense attorney that...allows the attorney to give each indigent defendant the time and effort necessary to ensure effective representation.”<sup>8</sup> The purpose of the current appellate weighted caseload study is to provide Texas policymakers and practitioners with guidelines against which to gauge the appropriateness of caseloads currently carried by appellate counsel in the state.

## II. Project Design

The methodology used in the original trial-level weighted caseload study was replicated to address two fundamental research questions:

- 1) How much time “is” currently being spent on the defense of court-appointed appellate cases?
- 2) How much time “should” be spent to achieve reasonably effective representation for appellate clients?

The following paragraphs provide an overview of the study approach.

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<sup>6</sup> See Disciplinary Proceedings against Artery, 709 N.W.2d 54, 62 (Wis.2006); Matter of Whitlock, 441 A.2d 989,990 (D.C. 1982); Matter of Klipstine, 775 P.2d 247, 249 (N.M. 1989) in NORMAN LEFSTEIN, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE 63 (2011) [hereinafter SECURING REASONABLE CASELOADS], *available at* [http://www.americanbar.org/content/dam/aba/publications/books/ls\\_sclaid\\_def\\_securing\\_reasonable\\_caseloads.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf). See also JUSTICE POLICY INST., SYSTEM OVERLOAD: THE COSTS OF UNDER-RESOURCING PUBLIC DEFENSE 20–21 (2011), *available at* [www.justicepolicy.org/uploads/justicepolicy/documents/system\\_overload\\_final.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/system_overload_final.pdf).

<sup>7</sup> See Memorandum of Decision, Wilbur v. City of Mount Vernon, No. C11-1100RSL, 2013 WL 6275319 (W.D. Wash. Dec. 4, 2013), *available at* [http://www.opd.wa.gov/documents/0181-2013\\_WilburDecision.pdf](http://www.opd.wa.gov/documents/0181-2013_WilburDecision.pdf).

<sup>8</sup> Tex. H.B. 1318, 83rd Leg., R.S. (2013).

## **Appellate Weighted Caseload Study Advisement**

To better understand the current context of caseload-related practice and research, and to prepare for the study, the research team sought input from stakeholders with diverse policy and professional perspectives.

### ***State and National Advisors***

The research approach was first reviewed by a group of state and national advisors. Convened in October of 2013, the panel's perspectives and recommendations were integrated into planning for the original trial-level study,<sup>9</sup> and established the foundation for the appellate study presented here. Constituencies represented included national caseload experts, national indigent defense practitioners, Texas criminal defense attorneys, representatives of key constituencies (e.g., county and criminal defense advocates), and state legislators responsible for HB 1318 that called for the study.

### ***Expert Appellate Defense Advisors***

Attorneys from the state's major public defender offices (PDOs) in Harris and Dallas Counties were asked to assist the study by providing technical expertise in appellate defense. Experienced appellate defenders from these offices volunteered to meet with the research team on multiple occasions in conference calls, webinars, and face-to-face meetings. They helped researchers understand key features of appellate practice and advised in the creation of the time and task categories underlying the data collection framework.

## **Methodologies**

Two primary methodologies were used to compile the information needed to develop caseload recommendations for Texas. Attorney timekeeping data was used to establish how much time "is" currently being spent to defend appellate clients. Expert opinion collected using the Delphi method was used to determine the amount of time that "should" be spent to provide reasonably effective counsel.

### ***Attorney Timekeeping***

To measure the time currently expended by attorneys on appellate court-appointed cases, actual records of attorney practice were needed. It proved unfeasible to collect time data from a representative sample of attorneys taking appellate cases,<sup>10</sup> primarily because a small number of private practice attorneys carry most of the state's appellate court-appointed caseload. For instance, during FY 2015, only 55 Texas attorneys handled 10 or more court-

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<sup>9</sup> *Supra* note 1.

<sup>10</sup> *Id.* Appendix C describes methods used in the Texas a broad cross-section of the state.

appointed appellate cases.<sup>11</sup> To obtain a number of appellate cases comparable to that used in the original trial-level study (8,151 cases), all of these appellate practitioners would have had to participate in timekeeping for several years.<sup>12</sup>

The Harris and Dallas County PDOs were able to provide the volume of time data needed for meaningful analysis. These offices represent a large number of appellate cases, and attorneys have done permanent timekeeping for a number of years. They provided the study with over four years of case information and timekeeping records for 857 cases (607 cases from Dallas County and 250 cases from Harris County) disposed between January 1, 2012 and February 16, 2016.

### ***The Delphi Process***

While timekeeping generated information about the time that “is” being spent on court-appointed appellate cases, the same highly structured Delphi method<sup>13</sup> used in the original trial-level study was applied to determine how much time “should” be spent to achieve reasonably effective counsel. Twelve highly experienced appellate defense attorneys were recruited to be a part of the Delphi Panel. Ten panel members were solo private practitioners or partners in law firms and two members were chief appellate public defenders. Together they averaged 22.9 years in practice. A complete list of members is presented in Appendix B.

Panel members learned about the Delphi process through a webinar held November 9, 2015. After learning the group’s charge and the research procedure, Delphi Panel members spent the next five weeks completing a highly specified iterative process involving a three-round sequence of data collection. During the first round, respondents made independent judgments about the frequency with which specific tasks should be done and the amount of time that should be spent when each task is performed (see Table 2-2). In the second round, participants had the option to adjust responses after reviewing median recommendations from the panel as a whole.

For the third round of data collection, an in-person meeting was held on January 14, 2016. There, in a day-long facilitated discussion, Delphi Panel members applied their cumulative expertise to resolve differences and reach consensus on final caseload guidelines. A national

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<sup>11</sup> TEXAS INDIGENT DEFENSE COMMISSION, FY 2015 STATEWIDE INDIGENT DEFENSE CASELOAD REPORT, *available at* <http://tidc.tamu.edu/public.net/Reports/AttorneyCaseLoad.aspx>

<sup>12</sup> *Supra* note 1. Without the assertive telephone outreach used in the adult trial-level study, just six private practice attorneys were successfully recruited by email to track time on appellate cases.

<sup>13</sup> *See generally, supra* note 1, Section II & Section VII (discussing the Delphi method).

caseload expert was present to observe and set parameters for the group’s discussion based on consideration of professional standards rather than current practice.<sup>14</sup>

## Data Collection Framework

For the collection and analysis of timekeeping data, measurement guidelines were adopted to define a case, appellate stage, case complexity, and time task categories. The framework was applied for both the timekeeping study and the Delphi Panel deliberations.

### Case Definition

Attorney time was measured at the “case” level. In accordance with the trial-level weighted caseload study, the definition of a “case” is taken from the Office of Court Administration’s instructions to reporting courts.<sup>15</sup> By this standard, one or more charges under a single indictment or information are considered to be a single case.

#### Texas Office of Court Administration Definition of Criminal Cases

[I]f an indictment or information contains more than one count (Section 21.24, CCP), report this as **one case** under the category for the **most serious offense alleged**. If all counts are of the same degree, report the case under the category for the first offense alleged. [Emphasis in the original.]

### Appellate Case Stages

Because the tasks performed by attorneys differ depending on the stage of the appellate proceedings, attorney time was measured separately for each of three stages shown in Table 2-1. The first phase, Post-Conviction Matters in the Trial Court, is initiated when a motion for new trial is filed upon disposition of the trial case. While all defendants in criminal cases have the right to an appeal, many choose not to do so or forego the option as a condition of a plea agreement.<sup>16</sup>

Although the number of cases with a motion for new trial is not known, data collected by the Office of Court Administration<sup>17</sup> shows that of the 1,429,714 Felony and Class A and B Misdemeanor cases disposed in Fiscal Years (FY) 2013-14, only 11,917 cases reached the second

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<sup>14</sup> Since retiring from Missouri law firm Holland & Knight, Attorney Steven F. Hanlon has confined his practice to assisting and representing public defenders with excessive caseloads. Mr. Hanlon helped develop the use of the Delphi methodology to determine reasonable caseloads in Missouri, and has consulted in the conduct of similar studies in Rhode Island, Tennessee, Texas, and Louisiana.

<sup>15</sup> OFFICE OF COURT ADMIN. TEX. JUDICIAL COUNCIL, OFFICIAL DISTRICT COURT MONTHLY REPORT INSTRUCTIONS 1 (2013), *available at* [http://www.txcourts.gov/media/513947/District-Report-Instructions-9\\_1\\_13.pdf](http://www.txcourts.gov/media/513947/District-Report-Instructions-9_1_13.pdf).

<sup>16</sup> See *Texas Rules of Appellate Procedure* 25.2(a)(2), *available at* [http://www.txcourts.gov/media/514722/TRAP\\_2014\\_01\\_01.pdf](http://www.txcourts.gov/media/514722/TRAP_2014_01_01.pdf)

<sup>17</sup> OFFICE OF COURT ADMIN. TEX. JUDICIAL BRANCH. *Annual Statistical Report for the Texas Judiciary: FY 2013, FY 2014*, *available at* <http://www.txcourts.gov/statistics/annual-statistical-reports/>

phase: Proceedings in the Court of Appeals. If the Court of Appeals returns an unfavorable decision, defendants may file a Petition for Discretionary Review (PDR) in the Texas Court of Criminal Appeals. About a quarter of cases (27 percent, n=2,512) advanced to the third stage: Proceedings in the Court of Criminal Appeals.

**Table 2-1. Appellate Stages and Description**

<b>Appellate Stage</b>	<b>Description</b>
<b>STAGE 1: Post-Conviction Matters in the Trial Court (TC)</b>	<ul style="list-style-type: none"> <li>This phase begins on the date of appointment. It generally refers to the interval following the trial court determination during which a motion for new trial is being considered.</li> </ul>
<b>STAGE 2: Proceedings in the Court of Appeals (COA)</b>	<ul style="list-style-type: none"> <li>This phase includes work to prepare and present the case in the Court of Appeals.</li> <li>This phase ends on either (a) the date of mandate if no Petition for Discretionary Review (PDR) to the Texas Court of Criminal Appeals is filed, or (b) the time work begins on a PDR if one is to be filed.</li> </ul>
<b>STAGE 3: Proceedings in the Court of Criminal Appeals (CCA)</b>	<ul style="list-style-type: none"> <li>This phase begins when work is initiated on a PDR and ends on the date of mandate.</li> </ul>

### ***Case Complexity***

Unlike the Texas adult trial and juvenile case weighting studies<sup>18</sup> where offense level was used to classify cases by complexity, the length of the trial court reporter's record is one of the few consistently available indicators of difficulty and attorney effort available for appellate cases. The reporter's record is a written transcript that documents the entirety of the court proceedings. The record length is widely used as a caseload metric among appellate defender offices.<sup>19</sup> Though an imperfect indicator, it is directly tied to the amount of time spent reading and taking notes on the record, and to a lesser extent researching and drafting a response. Moreover, other influential factors such as offense, statutory sentencing guidelines, number of issues raised on appeal, number and types of briefs or motions, and attorney experience were not available for systematic analysis in the current study.

Based on guidance from the Delphi Panel caseload recommendations in the current study are organized into four page length groups: (1) Less than 100 pages (36 percent of cases), (2) 100-500 Pages (41 percent of cases), (3) 500-1500 Pages (22 percent of cases), and (4) More than

<sup>18</sup> *Supra* note 1. See also, TEXAS INDIGENT DEFENSE COMMISSION, JUVENILE ADDENDUM: GUIDELINES FOR INDIGENT DEFENSE CASELOADS (2016).

<sup>19</sup> Examples include the Illinois Office of the State Appellate Defender, the Washington Defender Association, and the Michigan State Appellate Defender Office.

**Table 2-2. Time Categories and Definitions**

Time Categories	Appellate Stage		
	TC	COA	CCA
<b>Client Communication</b>			
<ul style="list-style-type: none"> <li>General communication regarding appellate procedures and case status</li> <li>Jail visits, meetings, letters, emails, texting, phone, discussions with client or family members</li> </ul>	✓	✓	✓
<b>Motion for New Trial Investigation</b>			
<ul style="list-style-type: none"> <li>Investigation of new trial including communication with witnesses or information-gathering from clients, trial attorney, and experts; legal research regarding substance of the case; obtaining and reviewing mitigation records not presented; consulting with investigator.</li> </ul>	✓		
<b>Motion for New Trial Litigation</b>			
<ul style="list-style-type: none"> <li>Litigation of new trial including drafting motions and exhibits, preparation of witnesses, preparation of evidence, legal research</li> </ul>	✓		
<b>Investigator's Time</b>			
<ul style="list-style-type: none"> <li>Investigation of the facts conducted by private practice or public defender investigators.</li> <li>If investigation is conducted by office support staff, record the time as Case Specific Office Support</li> </ul>	✓		
<b>Initiation of the Appeal</b>			
<ul style="list-style-type: none"> <li>Creation of documents including designation of record, notice to court reporter, docketing statement, notice of appeal and/or appointment.</li> </ul>		✓	
<b>Record Review</b>			
<ul style="list-style-type: none"> <li>Review of the trial record and briefs to determine appellate strategy.</li> <li>Includes legal research; brainstorming/consultation to advise client of alternate courses of action (e.g., decision to file appeal or PDR).</li> </ul>		✓	
<b>Appellate Briefs</b>			
<ul style="list-style-type: none"> <li>Writing and editing Opening, Reply, Supplemental, Amended, and Anders Briefs.</li> <li>Includes review(s) of trial record or State's brief, legal research, brainstorming / consultation</li> </ul>		✓	
<b>Appellate Motions</b>			
<ul style="list-style-type: none"> <li>Drafting and filing motions in trial court or appellate court (other than motions for new trial)</li> </ul>		✓	
<b>Oral Argument</b>			
<ul style="list-style-type: none"> <li>Review of applicable record portions and legal briefs; legal research; drafting oral argument; moot court; brainstorming/consultation; attending oral argument by others with your panel.</li> <li>Presenting oral argument in court</li> </ul>		✓	✓
<b>Petition for Discretionary Review</b>			
<ul style="list-style-type: none"> <li>Legal research, brainstorming/consultation, writing/editing of PDR.</li> </ul>			✓
<b>Brief after PDR Granted</b>			
<ul style="list-style-type: none"> <li>Reading(s) of trial record, legal research, brainstorming/consultation, writing/editing brief</li> </ul>			✓
<b>Case-Specific Office Support</b>			
<ul style="list-style-type: none"> <li>Time spent by attorneys or their staff (paralegals, clerical, or administrative support staff) conducting administrative duties related to the defense of a specific client.</li> <li>Includes file creation and maintenance, invoicing, and calendaring.</li> <li>May include fact-finding, social work, or other case-specific functions performed by a non-attorney assistant.</li> </ul>	✓	✓	✓

1500 pages (1 percent of cases). Delphi members were asked to use their decades of experience and professional discretion to account for the wide variability in complexity of appeals within a record length category when making time recommendations.

### ***Time Categories***

For cases at each appellate stage and page length, timekeeping data were organized around 12 separate attorney task categories. Defined in Table 2-2, they include communication with clients or their families, motion for new trial investigation, motion for new trial litigation, investigator's time, preparation of appellate briefs, initiation of the appeal, record review, appellate motions, oral argument, PDR-related activities, brief-related activities after the PDR has been granted, and case-specific office support. Only client communication and case-specific office support occur at all appellate stages.

## **III. Time Currently Being Spent on Court-Appointed Cases**

The first phase of the appellate case weighting study involved measurement of current indigent defense practice. This data provides a “real world” description of defense-related services. It also offers a baseline for assessing the amount of additional time, if any, that may be required to provide reasonably effective representation. Since the Harris and Dallas County Appellate PDO timekeeping systems do not distinguish attorney time spent on Stage 1 Post-Conviction Matters and Stage 2 activities in the Court of Appeals, estimates of current practice for these two stages were reported together. Results for this combined category are referred to hereinafter as Stage 1-2. The combined Stages 1 and 2 includes time spent on all activities leading up to a disposition in the Court of Appeals.

Stage 3 represents the additional time involved if the case proceeds to the Court of Criminal Appeals. In addition, some of the time entries that appeared to happen in Stage 2 were counted in Stage 3 if (a) they were the types of activities an attorney would utilize to prepare a PDR and (b) they occurred 30 or 60 days prior to the PDR filing date.<sup>20</sup> The categories reallocated included: time spent on client contact/correspondence, research, review, and writing.

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<sup>20</sup> The 30-day period was used for cases where there was no motion to extend the deadline to file the PDR brief. The 60-day period was used for cases where a motion was filed to extend the deadline to file the PDR brief. In Harris County, a differentiation between the 30 and 60-day period could be made because the motion filing date could be identified. In Dallas, however, the motion filing date was not available. Therefore, only time spent 30 days prior to the PDR filing date was allocated to Proceedings in the Court of Criminal Appeals. Despite the difference in time allocation procedure, analyses indicated that there was no difference between the two counties on the amount of time allocated to Stage 3 activities.



**Figure 3-1. Average Hours Currently Spent on Appellate Cases**

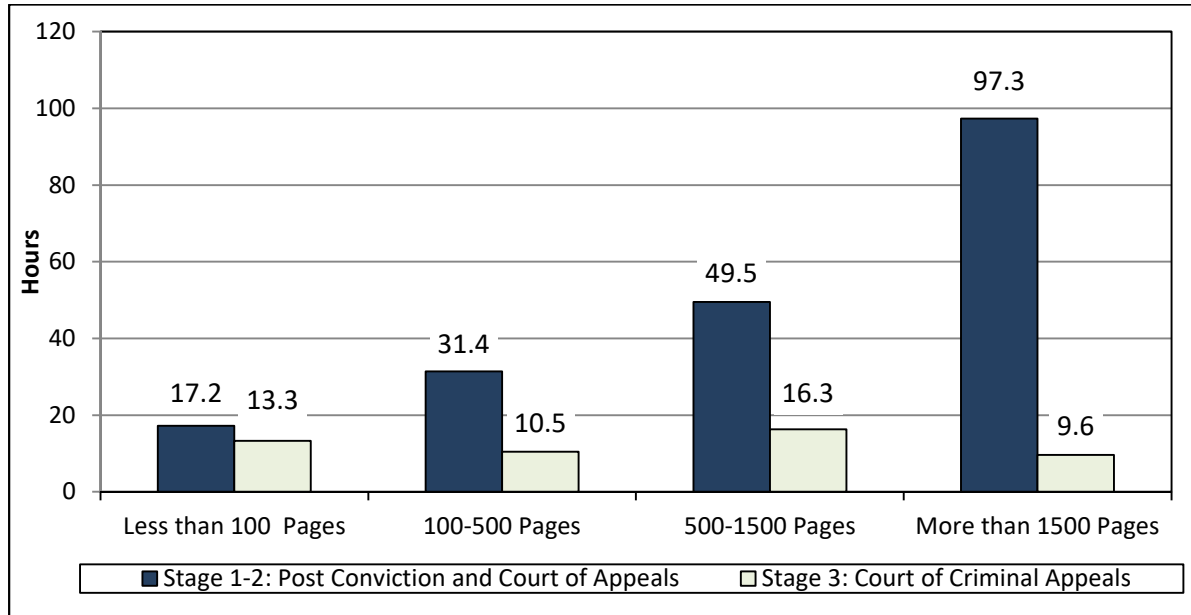
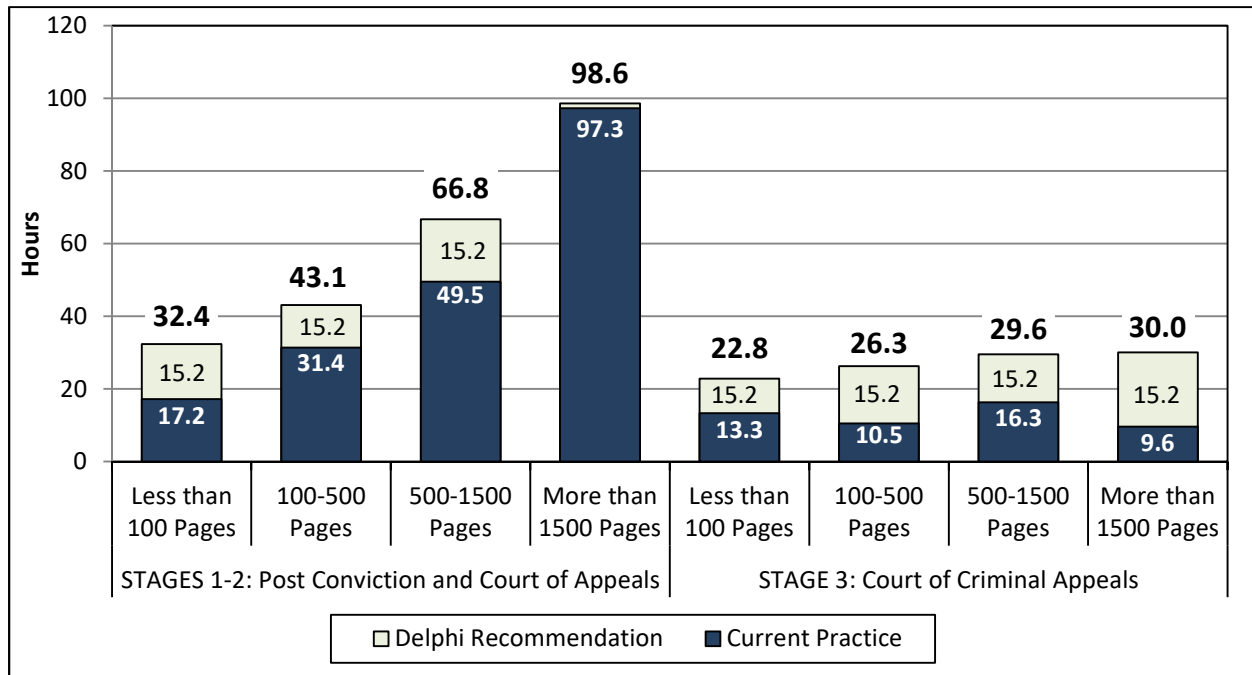


Figure 3-1 shows the average number of hours appellate attorneys in the study actually spend by case stage and length of the reporter’s trial record. The most time is spent in earlier case stages including post-conviction matters and proceedings in the Court of Appeals. The time required increase with page length. A reporter’s record with less than 100 pages requires about 17 hours to reach an appellate court mandate, while a case with more than 1500 pages requires almost 100 hours. By contrast, time requirements for proceedings in the Court of Criminal Appeals are much lower, ranging between 10 and 16 hours irrespective of the trial record length.

## **IV. The Delphi Caseload Determination**

The second phase of the case weighting study departs from actual practice to consider the time that “should” be spent on a case. Without an objective means to measure the attainment of reasonably effective counsel, expert opinion structured by the Delphi method was used to make this judgement (see Methodology, above). Because actual case complexity within each page length category can be quite varied, the experienced Delphi attorneys were asked to think holistically about the range and frequency of issues that might potentially emerge at each level.

**Figure 4-1. Current Practice Hours and Recommended Delphi Hours**



### Delphi-Recommended Time Increment by Case Complexity

Figure 4-1 compares the “reasonable” caseload guidelines recommended by Delphi experts to the time actually being spent on cases measured through timekeeping.<sup>21</sup> Additional time was recommended at each appellate case stage, as well as for all lengths of the reporter’s record. In the Court of Appeals, Delphi members recommended the largest proportional increase (88 percent) in time spent on the simplest cases (i.e., trial transcripts less than 100 pages). Members felt about the right amount of time (97 hours) is already being spent on cases with transcripts exceeding 1500 pages. Conversely, in the Court of Criminal Appeals, Delphi Panel members recommended an extraordinary 213 percent increase in time for cases with more than 1500 pages in Stage 3. Indeed, much larger proportional time increments were recommended for Stage 3 cases at all levels of complexity. The smallest was a 71 percent

<sup>21</sup> The frequency of oral arguments is determined by the court. During the Delphi Panel, members reported that oral arguments should occur in the Court of Appeals in 33 to 40 percent of cases; however, the actual rate of oral arguments at this stage is only four percent. Similarly, panelists recommended that oral arguments should occur in about 74 percent of cases in the Court of Criminal Appeals, compared to the actual rate of 11 percent. Actual percentages of oral arguments were used to calculate caseload recommendations. However, had the Delphi’s recommended percentages been used, the overall impact on the recommended hours and caseloads would be minimal. Specifically, using the Delphi recommended percentages results in six fewer cases for a reporter’s record of less than 100 pages, three fewer cases for 100 to 500 pages, two fewer cases for 500 to 1500 pages, and one less case for more than 1500 pages.

increase for cases with transcripts below 100 pages. (See Appendix E for illustration of Delphi Panel time calculation).

### **Delphi-Recommended Time Increment by Task**

Timekeeping data describing the time spent on specific appellate defense tasks was unavailable. Nonetheless, the Delphi Panel was able to make recommendations regarding the amount of time they judged necessary to deliver reasonably effective counsel for each time category at each stage. Results are presented in Figure 4-2.

Delphi experts agreed the least attorney time is required for effective representation at the Post-Conviction case stage. The most important Stage 1 tasks focus on the motion for new trial investigation (4 to 7 hours) and related litigation (2 to 4 hours). Less than three hours of time is required for other tasks like client communication, investigation, or office support at this earliest appellate case phase.

The greatest commitment of appellate attorney time is required for tasks in Stage 2. During Proceedings in the Court of Appeals, preparation of appellate briefs is the most complex and labor-intensive task, followed by record review. Indeed, Delphi members concluded the review of records exceeding 1500 pages in length should be the single most time consuming activity for appellate counsel. Oral argument requires a moderate attorney effort ranging from two to five hours. Other Stage 2 case tasks are anticipated to require no more than four hours of time for reasonably effective counsel.

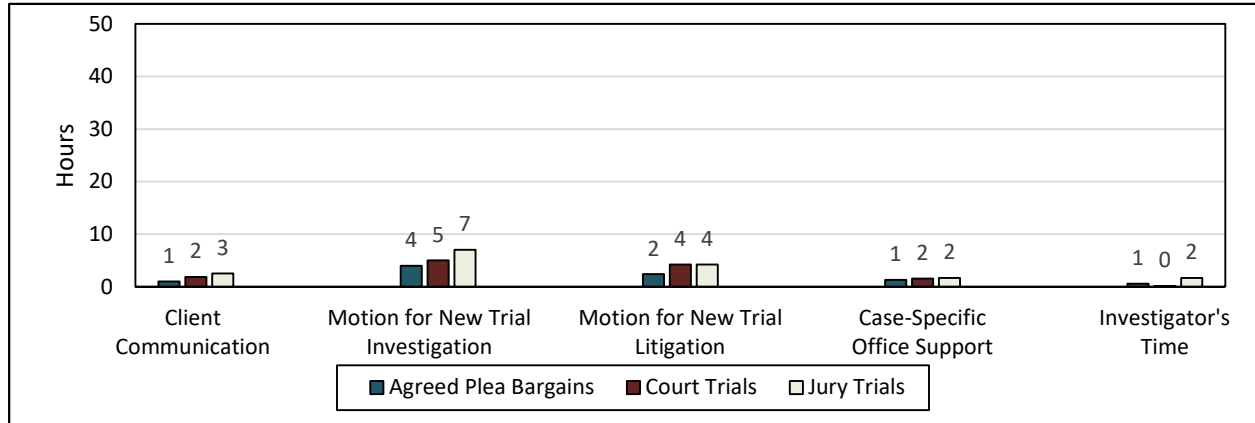
For cases reaching Stage 3, the time recommended by Delphi members in any given task category was approximately the same irrespective of the reporter's record length. Attorneys should expect to spend the most time – eight to twelve hours – on each of two major tasks: oral argument, and preparing briefs after a PDR has been granted. Less than four hours are needed for the remaining tasks including client communication, case-specific office support, and Petition for Discretionary Review, during this final case phase.

## **V. Texas Caseload Guidelines**

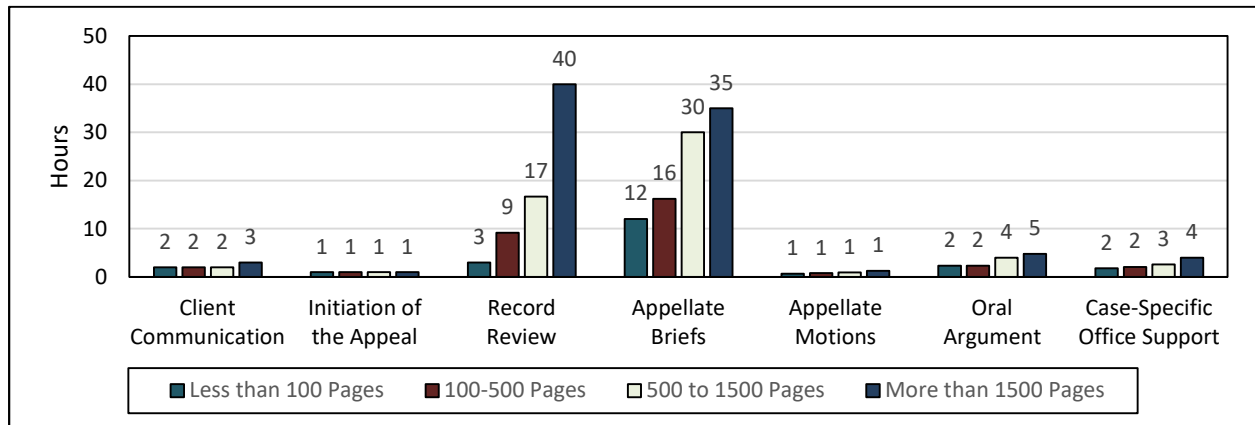
With the conclusion of Texas's appellate weighted caseload study, information is now available on how practicing attorneys spend their time on court-appointed cases. In addition, the Delphi Panel recommendations establish professional norms regarding how indigent defense "should" be provided in this state. This section of the report compares and integrates guidance from these sources, culminating in a recommendation for appellate caseload parameters.

**Figure 4-2. Hours per Task Recommended by Delphi Panel at Each Case Stage**

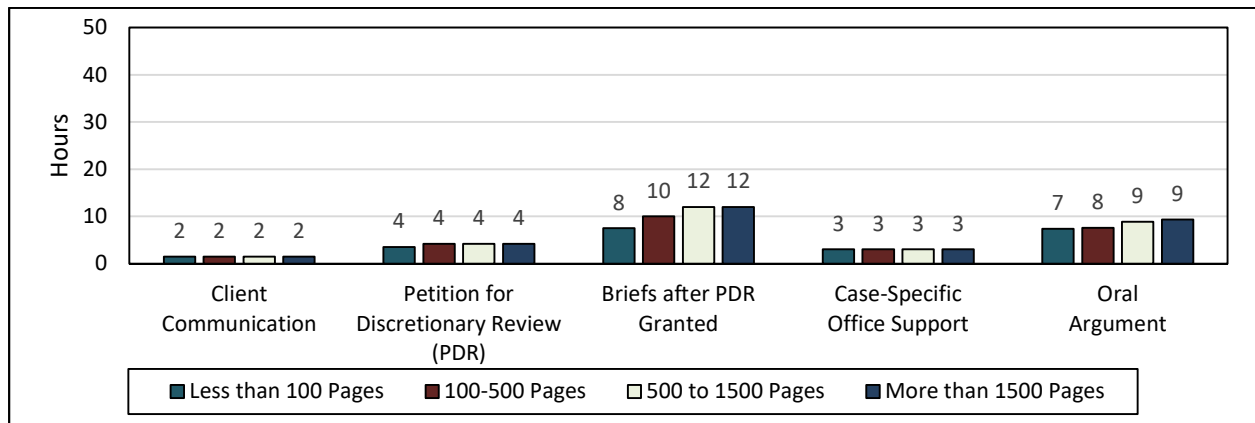
**Figure 4-2a. Post-Conviction Matters in the Trial Court (Stage 1)**



**Figure 4-2b. Proceedings in the Court of Appeals (Stage 2)**



**Figure 4-2c. Proceedings in the Court of Criminal Appeals (Stage 3)**



## Delphi Recommended Cases per Year

The time attorneys say “should” be spent on different types of cases was used as the basis for calculating maximum caseload guidelines. To convert the hourly time estimates reported above into annual caseloads it was first assumed that attorneys work 2,087 hours per year<sup>22</sup> and that all of that time is spent defending appellate clients. However, members of the appellate Delphi Panel questioned this premise, arguing that some time should be allocated for activities such as holidays and vacations, sick leave, professional development and office administration. To address this concern, members were asked to contribute additional data estimating the adjustment required to allow for extraneous responsibilities. The group recommended 698 hours for work unrelated to cases, yielding an estimated 1,389 hours for appellate case work.<sup>23</sup> These parameters were then used to calculate annual caseload guidelines using the formula shown below:

$$(2,087 \text{ Hours/Work-Year} - 698 \text{ Hours of Non-Case Time}) / (\# \text{ Hours/Case}) = \text{Annual Full-Time Caseload}$$

Computed separately for each transcript length category, the resulting guidelines represent the maximum number of clients a single attorney should represent in a year if they handle only appellate cases of a particular type. Table 5-1 shows how the revised work-year estimate was applied to determine a full-time caseload of appeals at each level of record length.

**Table 5-1. Formula for Overall Delphi-Recommendation**

Column A	Column B	Column C	Column D
Record Length	Delphi-Recommended Hours per Case	Time Available	Delphi-Recommended Number of Cases (Column C/Column B)
< 100 pages	34.8 hours	1,389 case-related hours in the work year	<b>40 cases</b>
100-500 pages	46.4 hours		<b>30 cases</b>
500-1,500 pages	69.1 hours		<b>20 cases</b>
1,500+ pages	100.2 hours		<b>14 cases</b>

<sup>22</sup> The 2,087-hour work week is taken from the US Government’s Federal civilian employee full-time pay computation, available at <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/computing-hourly-rates-of-pay-using-the-2087-hour-divisor/>.

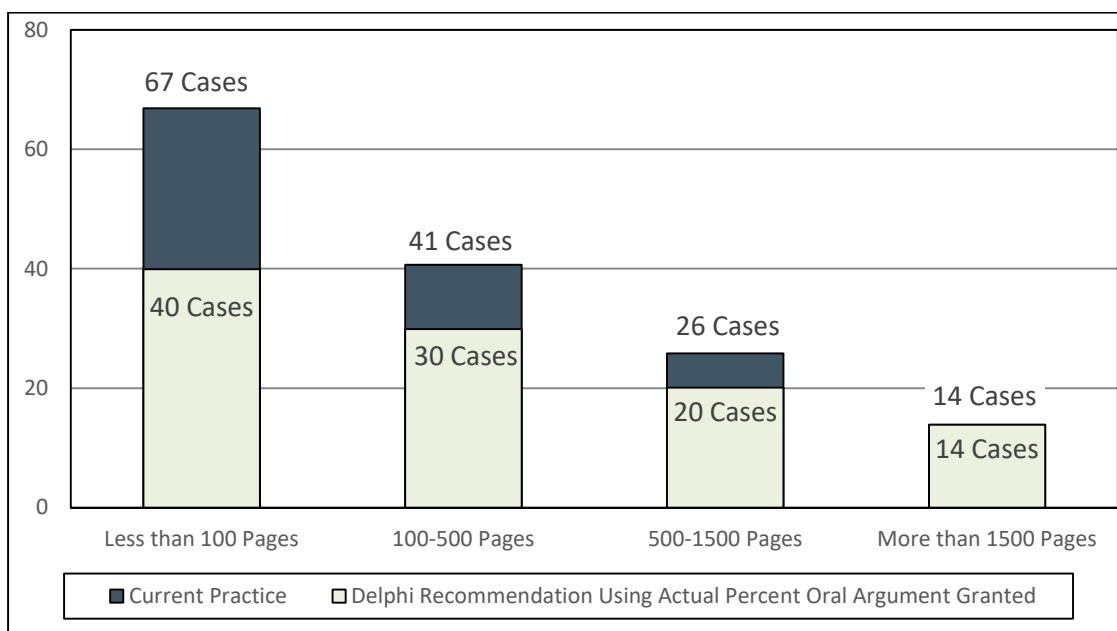
<sup>23</sup> Five of the 12 Delphi Panel members contributed data regarding time allocations. Recommended time available for appellate defense work ranged from a low of 1,351 hours per year to a high of 1,439 hours per year.

## Caseload Recommendations Compared to Current Practice and NAC Standards

### *Current Practice vs. Delphi Recommendation*

Figure 5-1 compares maximum caseloads recommended by the Delphi Panel with actual practice taken from the timekeeping data. The opinion of the panel is that more time is needed to achieve reasonably effective representation, necessitating caseload reductions across for all four transcript lengths.

**Figure 5-1. Case Recommendations Comparing Current Practice to Delphi Recommendation**



According to panel members, an attorney with a full-time workload of cases with a transcript length less than 100 pages should defend 27 fewer cases each year than occurs in current practice – a 40 percent reduction. A full-time appellate caseload with transcript length between 100 and 500 pages should be reduced by 11 cases each year – a 27 percent reduction. A full-time workload of cases with a record length of 500 to 1500 pages requires 6 fewer cases per year for effective counsel – a 23 percent reduction. Finally, Delphi Panel members indicated no change is necessary in the time spent on the most complex cases with trial transcripts exceeding 1500 page cases.

Mirroring standards set forth by the State Bar of Texas's *Performance Guidelines*,<sup>24</sup> Delphi experts recommended two to three hours of case time be allocated to external investigators

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<sup>24</sup> *Supra* note 4.

during Stage 1, Post-Conviction Proceedings. Attorneys are advised to engage independent investigators to develop evidence relating to a potential motion for a new trial.<sup>25</sup> Only then is there a means to impeach a witness in court. While delegating this work to an external investigator frees additional attorney time, the increment is not large enough to impact final caseload guidelines.

#### ***Current Practice vs. NAC Standards***

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC), organized and funded by the federal government, recommended national annual maximum caseload numbers for indigent defense programs. Although serious concerns have been expressed about the validity of the NAC standards for contemporary criminal defense representation,<sup>26</sup> for over 40 years the Commission's advised caseload limit of 25 appellate cases has been widely cited. For this reason, it is worthwhile to compare NAC standards to appellate case weights from the current study.

A public defender caseload should not exceed 150 felonies, 400 misdemeanors, 200 juvenile cases, 200 Mental Health Act cases, or 25 appeals cases per year.

*National Advisory Commission (1973)*

**Table 5-2. Overall Texas Appellate Caseload Recommendation**

Column A	Column B	Column C	Column D	Column E
<b>Record Length</b>	<b>Delphi-Recommended Hours per Case</b>	<b>Percent of Reporter's Records in the Category</b>	<b>Delphi-Recommended Number of Cases</b>	<b>Weighted Recommended Caseload Estimates</b> (Column C x Column D)
< 100 pages	34.8 hours	36%	40 cases	14.4 cases
100-500 pages	46.4 hours	41%	30 cases	12.3 cases
500-1,500 pages	69.1 hours	22%	20 cases	4.4 cases
1,500+ pages	100.2 hours	1%	14 cases	0.1 cases
<b>Overall Texas Appellate Caseload Recommendation:</b>				<b>31.2 cases</b>

To make a direct comparison to the NAC standard, it is first necessary to combine separate caseload recommendations the four levels of case complexity into a single value. This was done by weighting the recommended caseload estimates by the actual percentage of cases in each of the page length groups (see Table 5-2). Based on timekeeping data, 36 percent of cases are less

<sup>25</sup> See generally, *supra* note 1, Section V, Time Increment by Task.

<sup>26</sup> For a summary of limitations of the NAC standards, see NORMAN LEFSTEIN, SECURING REASONABLE CASELOADS, *supra* note 5, at 43–45.

than 100 pages, 41 percent are 100 to 500 pages, 22 percent are 500 to 1500 pages, and 1 percent is more than 1500 pages.

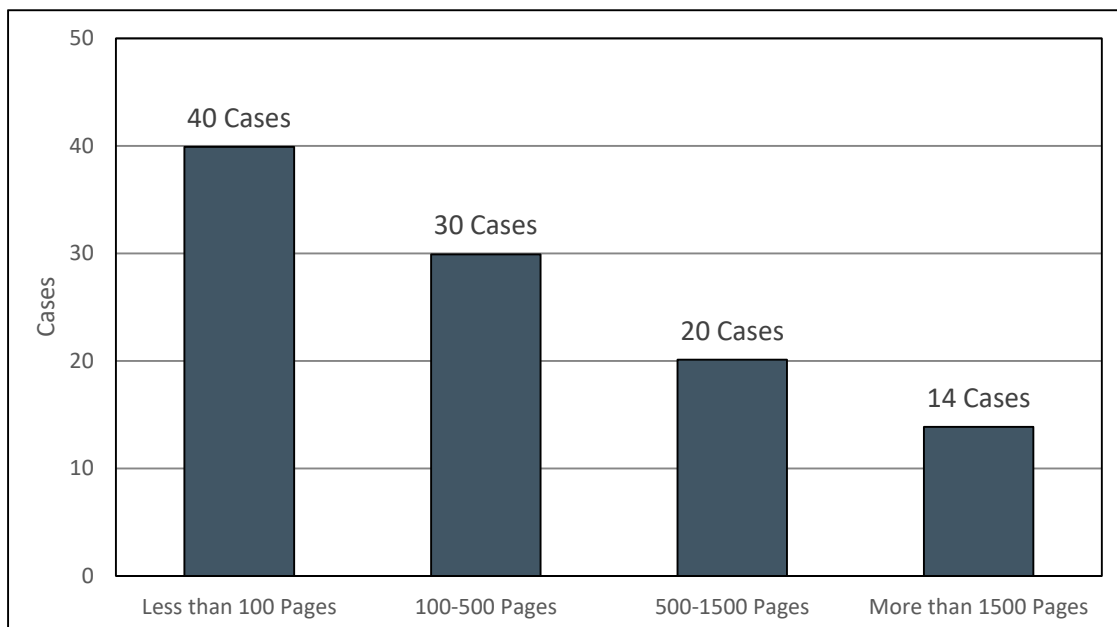
After weighting, the study produces an overall estimate of 31.2 appellate cases per year. Delphi experts therefore allow for Texas appellate attorneys to accept an additional 6.2 cases each year than are advised by the NAC standard. Direct comparisons like this are difficult to interpret, however, because the NAC standard does not make plain underlying assumptions about appellate case complexity.

### Final Recommended Caseload Guidelines

This report demonstrates that establishing indigent defense caseload parameters is necessarily a qualitative determination. However, the research approach used here relies upon structured processes to introduce order and logic into the decision-making process. Findings are based on:

- Independent judgments made by highly qualified professionals,
- Collaborative consideration of factors impacting time required for effective counsel,
- A rational decision-making protocol to promote valid results, and
- Use of evidence from convergent data sources.

**Figure 5-2. Final Recommended Caseload Guidelines for Texas**  
*(Based on Delphi Time Estimates)*





Upon its conclusion, the study offers guidance to policymakers and appointing authorities regarding the number of appellate cases that can be effectively defended (Figure 5-2). The results indicate, for the delivery of reasonably effective representation, appellate attorneys should carry an annual full-time equivalent caseload of no more than the following:

- 40 appeals with reporter's record of less than 100 pages,
- 30 appeals with reporter's record of 100 to 500 pages,
- 20 appeals with reporter's record of 500 to 1500 pages, or
- 14 appeals with reporter's record of more than 1500 pages.

Importantly, because the number of cases recommended at each case level reflects a full-time effort, weighting is required to determine whether an individual attorney with a diverse mix of cases is within the recommended parameters. For instance, an attorney with an actual caseload of 30 appeals with a transcript length less than 100 pages (i.e., 50 percent effort), 11 of transcript length 100 to 500 pages (i.e., 25 percent effort) and 15 cases of length between 500 and 1,500 pages (50 percent effort), would exceed full-time caseload guidelines by 25 percent. Likewise, an attorney representing other case types like trial, juvenile, or civil law would have to account separately for the time allocated to these other practice areas. Published weighted caseload studies of trial, juvenile, and now appellate practice are available from the Texas Indigent Defense Commission to help in this determination.<sup>27</sup>

## VI. Conclusion

According to standards promulgated by the American Bar Association, defense attorneys “should not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.”<sup>28</sup> A central purpose of this research has been to collect data needed to establish the amount of time required to provide reasonably effective counsel given contemporary requirements of appellate defense within the state of Texas. Rigorous research methods were employed, first to assess current time being spent on different levels of cases, then to get normative judgments from a wide spectrum of attorneys regarding the time required to meet professional obligations.

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<sup>27</sup> *Supra* note 1 and note 18.

<sup>28</sup> See ABA, PROVIDING DEFENSE SERVICES, Standard 5-5.3, *available at* [http://www.americanbar.org/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_defsvcs\\_toc.html](http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_toc.html). See also ABA STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE 17 (2004), *available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_bp\\_right\\_to\\_counsel\\_in\\_criminal\\_proceedings.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf).

Results, presented in Figure 5-2, show the final caseload recommendations. With evidence-based guidelines, appointing authorities and attorneys taking appointments can be held accountable for managing workloads. In addition, information is available to set fair compensation rates, and jurisdictions adhering to reasonable caseload limits are less exposed to potential litigation. Caseload guidelines alone do not guarantee the provision of reasonably effective counsel, but they are an essential component in securing the promise of the Sixth Amendment right to counsel for the indigent accused.

With the development of appellate guidelines for the state of Texas, a tool is available to define the point at which caseloads become excessive. This tool can be used in important ways to protect the Constitutional right to counsel and the equitable administration of justice.

## **APPENDIX A**

### **Attorneys Contributing Timekeeping Data**



## Attorneys Participating in the Timekeeping Study

Name	Firm
Franklin Bynum	Harris Public Defender Office
Frances Bourliot	Harris Public Defender Office
Angela Cameron	Harris Public Defender Office
Katherine Drew	Dallas Public Defender Office
Cheri Duncan	Harris Public Defender Office
Adrienne Dunn	Dallas Public Defender Office
Nan Hendrickson	Dallas Public Defender Office
Nicolas Hughes	Harris Public Defender Office
Mark Kratovil	Harris Public Defender Office
Melissa Martin	Harris Public Defender Office
Jani Maselli	Harris Public Defender Office
James McDermott	Dallas Public Defender Office
Riann Moore	Dallas Public Defender Office
Alicia O'Neill	Harris Public Defender Office
Brian Portugal	Dallas Public Defender Office
Dauice Schindler	Harris Public Defender Office
Eric Stoeber	Dallas Public Defender Office
Kathleen Walsh	Dallas Public Defender Office
Bob Wicoff	Harris Public Defender Office
Julie Woods	Dallas Public Defender Office



## **APPENDIX B**

### **Delphi Panel Members**





## Delphi Panel Members

Name	Title	Organization	Administrative Judicial Region/City
Clint Broden	Attorney at Law	Broden & Mickelsen, LLP	AJR: 1 Dallas
Allison Clayton	Attorney at Law	Law Office of Allison Clayton	AJR: 9 Lubbock
Katherine Drew	Chief Appellate Public Defender	Dallas County Public Defender's Office	AJR:1 Dallas
Reeve Jackson	Attorney at Law	The Jackson Law Firm	AJR: 1 Tyler
Jim Huggler	Attorney at Law	Law Office of Jim Huggler	AJR: 1 Tyler
Linda Icenhauer- Ramirez	Attorney at Law	Law Office of Linda Icenhauer- Ramirez	AJR: 3 Austin
Patrick McCann	Attorney at Law	Law Office of Patrick McCann	AJR: 2 Houston
Michael Mowla	Attorney at Law	Michael Mowla, PLLC	AJR: 1 Dallas
Gary Udashen	Attorney at Law	Sorrels, Udashen, & Anton	AJR: 1 Dallas
Bob Wicoff	Chief Appellate Public Defender	Harris County Public Defender's Office	AJR: 2 Houston
Josh Schaffer	Attorney at Law	The Schaffer Firm	AJR: 2 Houston
Richard Wetzel	Attorney at Law	Law Office of Richard Wetzel	AJR: 3 Austin



## **APPENDIX C**

### **Delphi Survey Response Forms**



## Example Delphi Panel Round One Response Form

### Post-Conviction Matters in the Trial Court

**INSTRUCTIONS:** Consider the TYPICAL case. For each group please provide estimates of the amount of time that is reasonably required to perform the respective task with reasonable effectiveness.

	Agreed Plea Bargains		Court Trials* (Guilt-Innocence and/or Punishment)		Jury Trials** (Guilt-Innocence and/or Punishment)		
	Minutes per Case when Task Is Performed	Percent of Cases where Task Should Be Performed	Minutes per Case when Task Is Performed	Percent of Cases where Task Should Be Performed	Minutes per Case when Task Is Performed	Percent of Cases where Task Should Be Performed	
Client Communication	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	<b>Explanation (optional):</b> You may enter as much text as you want to explain your recommendations. Copy and paste from a Word file if your comments are lengthy. <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>
Motion for New Trial Investigation	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	
Motion for New Trial Litigation	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	
Case-Specific Office Support	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	
Investigator's Time	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	<input type="text"/> mins.	<input type="text"/> %	
Total Case Time:	<input type="text" value="0.00"/> hour(s) total case time		<input type="text" value="0.00"/> hour(s) total case time		<input type="text" value="0.00"/> hour(s) total case time		

\* All bench trials including open pleas of guilty to the court without an agreed recommendation on punishment.

\*\* Include pleas of guilty to a jury.

## Example Delphi Panel Round Two Response Form

### Post-Conviction Matters in the Trial Court

**INSTRUCTIONS:** Consider the TYPICAL case. For each group please provide estimates of the amount of time that is reasonably required to perform the respective task with reasonable effectiveness.

	Agreed Plea Bargains						Court Trials* (Guilt-Innocence and/or Punishment)						Jury Trials** (Guilt-Innocence and/or Punishment)						<b>Explanation (optional):</b> You may enter as much text as you want to explain your recommendations. Copy and paste from a Word file if your comments are lengthy.
	Minutes per Case when Task Is Performed			Percent of Cases where Task Should Be Performed			Minutes per Case when Task Is Performed			Percent of Cases where Task Should Be Performed			Minutes per Case when Task Is Performed			Percent of Cases where Task Should Be Performed			
	YOUR ANSWERS	PEERS Median	PEERS Range*	YOUR ANSWERS	PEERS Median	PEERS Range*	YOUR ANSWERS	PEERS Median	PEERS Range*	YOUR ANSWERS	PEERS Median	PEERS Range*	YOUR ANSWERS	PEERS Median	PEERS Range*	YOUR ANSWERS	PEERS Median	PEERS Range*	
Client Communication	<input type="text"/>	mins. 60	37.5-110	<input type="text"/>	% 100	100-100%	<input type="text"/>	mins. 95	60-150	<input type="text"/>	% 100	100-100%	<input type="text"/>	mins. 120	75-180	<input type="text"/>	% 100	100-100%	
Motion for New Trial Investigation	<input type="text"/>	mins. 120	45-275	<input type="text"/>	% 100	15-100%	<input type="text"/>	mins. 180	60-450	<input type="text"/>	% 100	65-100%	<input type="text"/>	mins. 245	120-540	<input type="text"/>	% 100	100-100%	
Motion for New Trial Litigation	<input type="text"/>	mins. 180	90-460	<input type="text"/>	% 7.5	2-17.5%	<input type="text"/>	mins. 240	90-650	<input type="text"/>	% 22.5	7.5-29%	<input type="text"/>	mins. 310	120-650	<input type="text"/>	% 22.5	7.5-35%	
Case-Specific Office Support	<input type="text"/>	mins. 60	45-120	<input type="text"/>	% 100	13.5-100%	<input type="text"/>	mins. 60	52.5-150	<input type="text"/>	% 100	60-100%	<input type="text"/>	mins. 90	52.5-180	<input type="text"/>	% 100	60-100%	
Investigator's Time	<input type="text"/>	mins. 120	60-270	<input type="text"/>	% 12.5	3.5-75%	<input type="text"/>	mins. 240	120-300	<input type="text"/>	% 26.5	10-62.5%	<input type="text"/>	mins. 270	150-330	<input type="text"/>	% 29	10-62.5%	
Total Case Time:	<input type="text" value="0.00"/> hour(s) total case time <small>*The range shown is for the middle 50% of answers (i.e., 25th and 75th percentile)</small>						<input type="text" value="0.00"/> hour(s) total case time <small>*The range shown is for the middle 50% of answers (i.e., 25th and 75th percentile)</small>						<input type="text" value="0.00"/> hour(s) total case time <small>*The range shown is for the middle 50% of answers (i.e., 25th and 75th percentile)</small>						

\* All bench trials including open pleas of guilty to the court without an agreed recommendation on punishment.

\*\* Include pleas of guilty to a jury.

## **APPENDIX D**

### **Detailed Delphi Panel Results**





**Average Minutes Recommended by Delphi Panel for  
Stage 1: Post-Conviction Matters in the Trial Court**

POST-CONVICTION MATTERS IN THE TRIAL COURT	Agreed Plea Bargain	Court Trials	Jury Trials
<b>Client Communication</b>	60 (10.8%)	112 (13.2%)	150 (14.7%)
<b>Motion for New Trial Investigation</b>	240 (43.1%)	300 (35.3%)	420 (41.1%)
<b>Motion for New Trial Litigation</b>	144 (25.8%)	252 (29.7%)	720 (24.7%)
<b>Case-Specific Office Support</b>	78 (14.0%)	93 (11.0%)	100 (9.8%)
<b>Investigator's Time</b>	35 (6.3%)	92 (10.8%)	247 (9.7%)
<b>TOTAL MINUTES</b>	557 (100%)	849 (100%)	1,021 (100%)

**Average Minutes Recommended by Delphi Panel for**  
**Stage 2: Proceedings in the Court of Appeals**

PROCEEDINGS IN THE COURT OF APPEALS	Less than 100 Pages	100-500 Pages	500-1500 Pages	More than 1500 Pages
<b>Client Communication</b>	120 (9.6%)	120 (6.3%)	120 (3.7%)	180 (3.5%)
<b>Initiation of the Appeal</b>	60 (4.8%)	60 (3.2%)	60 (1.9%)	60 (1.2%)
<b>Record Review</b>	180 (14.4%)	550 (29.1%)	1,000 (31.1%)	2,400 (47.2%)
<b>Appellate Briefs</b>	720 (57.8%)	974 (51.5%)	1,800 (56.0%)	2,100 (41.3%)
<b>Appellate Motions</b>	39 (3.1%)	46 (2.4%)	55 (1.7%)	74 (1.5%)
<b>Oral Argument</b>	18 (1.4%)	18 (1.0%)	24 (0.7%)	29 (0.6%)
<b>Case-Specific Office Support</b>	110 (8.8%)	125 (6.6%)	156 (4.9%)	240 (4.7%)
<b>TOTAL MINUTES</b>	1,246 (100%)	1,893 (100%)	3,215 (100%)	5,083 (100%)

**Average Minutes Recommended by Delphi Panel for  
Stage 3: Proceedings in the Court of Criminal Appeals**

PROCEEDINGS IN THE COURT OF CRIMINAL APPEALS	Less than 100 Pages	100-500 Pages	500-1500 Pages	More than 1500 Pages
<b>Client Communication</b>	90 (9.0%)	90 (7.6%)	90 (6.8%)	90 (6.8%)
<b>Petition for Discretionary Review (PDR)</b>	210 (21.1%)	252 (21.2%)	252 (19.1%)	252 (19.0%)
<b>Briefs after PDR Granted</b>	450 (45.1%)	600 (50.4%)	720 (54.5%)	720 (54.3%)
<b>Case-Specific Office Support</b>	180 (18.0%)	180 (15.1%)	180 (13.6%)	180 (13.6%)
<b>Oral Argument</b>	67 (6.8%)	68 (5.7%)	79 (6.0%)	83 (6.3%)
<b>TOTAL MINUTES</b>	997 (100%)	1190 (100%)	1321 (100%)	1325 (100%)



## **APPENDIX E**

### **Illustration of Delphi Panel Time Calculations**

#### **Using Less than 100 Pages Category**



### Stage 1: Post-Conviction Proceedings in the Trial Court

To estimate time required at Stage 1, it was necessary to combine separate recommendations for attorney time in cases disposed by Court and Jury Trials, and Agreed Plea Bargains. A similar calculation was not required at other case stages.

STEP 1	Delphi-recommended time for Court Trials (849 minutes)	x 1.8% Statewide Trial Rate <sup>1</sup>	15 minutes	
STEP 2	Delphi-recommended time for Jury Trials (1,021 minutes)	x 1.8% Statewide Trial Rate	18 minutes	
STEP 3	Average recommended time for Court and Jury Trials			17 minutes
STEP 3	Delphi-recommended time for Agreed Plea Bargains			557 minutes
<b>Delphi-recommended time for Stage 1: Post-Conviction Proceedings in the Trial Court</b>				<b>574 minutes</b>

### Stage 2: Proceedings in the Court of Appeals

STEP 1	Delphi-recommended time for all appellate cases		1,246 minutes	
<b>Delphi-recommended time for Stage 2: Proceedings in the Court of Appeals</b>				<b>1,246 minutes</b>

### Stage 3: Proceedings in the Court of Criminal Appeals

Time required at Stage 3, was weighted by the proportion of cases for which Petitions for Discretionary Review are filed in the Court of Criminal Appeals.

STEP 1	Delphi-recommended time for Stage 3 cases (997 minutes)	x 27% PDR Rate <sup>2</sup>	269 minutes	
<b>Delphi-recommended time for Stage 3: Proceedings in the Court of Criminal Appeals</b>				<b>997 minutes</b>

<sup>1</sup> OFFICE OF COURT ADMIN. TEX. JUDICIAL BRANCH. *Annual Statistical Report for the Texas Judiciary: FY 2015*, available at <http://www.txcourts.gov/statistics/annual-statistical-reports/>

<sup>2</sup> OFFICE OF COURT ADMIN. TEX. JUDICIAL BRANCH. *Annual Statistical Report for the Texas Judiciary: FY 2013, FY2014*, available at <http://www.txcourts.gov/statistics/annual-statistical-reports/>

Total Time Recommended for Cases with Reporter's Record Length of Less than 100 Pages	
Delphi-recommended time for Stage 1: Post-Conviction Proceedings in the Trial	574 minutes
Delphi-recommended time for Stage 2: Proceedings in the Court of Appeals	1,246 minutes
Delphi-recommended time for Stage 3: Proceedings in the Court of Criminal Appeals	269 minutes
<b>Total Delphi-recommended Time</b>	<b>2,089 minutes</b>





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